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Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DELMA PALOMERA,

Defendant.

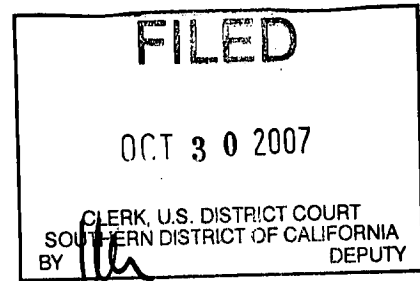
Criminal Case No. 07CR2234-WQH

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESSES AND
ORDER THEREON**

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and A. Dale Blankenship, Assistant United States Attorney, and defendant DELMA PALOMERA, by and through and with the advice and consent of defense counsel, Brian P. Funk, Esq., that:

1. Defendant agrees to execute this stipulation on or before the disposition date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to Count 2 of the Indictment which charges defendant with a non-mandatory minimum count of Bringing In Illegal Aliens Without Presentation, in violation of 8 U.S.C. §1324(a)(2)(B)(iii).

2. Defendant agrees to plead guilty to the charge described above pursuant to the plea agreement on or before September 16, 2007.



1 3. The material witness, Bonisu Gaytan-Diaz, in this case:
2 a. Is an alien with no lawful right to enter or remain in the United States;
3 b. Entered or attempted to enter the United States illegally on or about July 31,
4 2007;
5 c. Was found in a vehicle driven by Defendant at the San Ysidro, California,
6 Port of Entry, and that defendant knew or acted in reckless disregard of the fact that she was an alien
7 with no lawful right to enter or remain in the United States;
8 d. Was paying \$2000.00 to others to be brought into the United States illegally
9 and/or transported illegally to their destination therein; and,
10 e. May be released and remanded immediately to the Department of Homeland
11 Security for return to their country of origin.

12 4. After the material witness is ordered released by the Court pursuant to this stipulation
13 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or
14 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
15 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

16 a. The stipulated facts set forth in paragraph 3 above shall be admitted as
17 substantive evidence;

18 b. The United States may elicit hearsay testimony from arresting agents
19 regarding any statements made by the material witness provided in discovery, and such testimony
20 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against
21 interest of unavailable witnesses; and,

22 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
23 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
24 and cross-examined the witnesses who made the “testimonial” hearsay statements, defendant waives
25 the right to confront and cross-examine the material witnesses in this case.

26 5. By signing this stipulation and joint motion, defendant certifies that defendant has
27 read it (or that it has been read to defendant in defendant's native language). Defendant certifies

further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witnesses to the Department of Homeland Security for return to their country of origin.

It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

Dated: 10/15/07


A. DALE BLANKENSHIP
Assistant United States Attorney

Dated: 10/4/07


BRIAN F. FUNK
Defense Counsel for Edward Gonzales-Amado

Dated: 10/4/07


DELMA PALOMERA
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witnesses be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 10/30/2007


United States Magistrate Judge